DPW-83-038-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Contested Case
of Residential Alternatives, Inc.,
d/b,/a Residential Alternatives V, and
Wright County human Services Agency

Petitioner,

ORDER DENYING MOTION
V. TO DISMISS

Minnesota Department of Public Welfare,

Respondent.

On June 21, l983, Charles C. Jensch, Petersen, Tews & Squires, P.A., 600 Northwestern National Bank Building, St. Paul, Minnesota 55101, Attorneys for Pesidential Alternatives, Inc., (the "Facility") served a Motion to Dismiss upon, Mr. Frank Norton, Assistant Wright County Attorney, Courthouse, 10 North-west Second Street, Buffalo, Minnesota 55313, Attorney for Wright County Hunan Services agency (the "couunty"), and upon John M. Kir-win, Special Assistant Attorney General, 515 Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155, Attorney for the Minnesota Department of Public Welfare (the "Department"). The facility's Notice of Motion and Motion to Dismiss and its Memorandum in Support of Its Motion to Dismiss were filed with the office of Administrative Hearings on June 29, 1963. Neither the County, nor the De-partment responded to the Motion filed.

Based upon all the files, records, and proceedings herein, it is Ordered that the facility's Motion to Dismiss be and the same is hereby denied.

Bated this 6th day of July, 1983.

JON L. LUNDE
Hearing Examiner

MEMORANDUM

On September 17, 1982, the Department notified the Facility and the County of the Facility's per diem rate for the period from April 6, 198l to April 30, 1982 and for tne fiscal year commencing May 1, 1982. Both the Facility and tie County appealed the Department's rate determination within the 30 day time period set forth in 12 MCAR 2.052B.5.c.

The Facility has moved for an order dismissing the Counnty's appeal on the grounds that it fails to particularize the nature of its disagreement with the rate determination made by tie Department. The Facility argues &vat tie County's failure to particularize the grounds for its appeal from the rate determination violates the provisions of 12 MCAR 2.052B.5.d. and requires

dismissal. The Hearing Examiner is not persuaded that dismissal is required

or appropriate.

The per diem rates that may be charged by institutions providing resi-

dential services for the mentally retarded are governed by the provisions of

12 MCAR 2.052 (Rule 52). Rule 52B.5., pertaining to appeal procedures ap-

plicable to disputes arising under the rule provides in part as follows:

> 5. Appeal procedures.
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> a. Scope of appeals procedures. These procedures describe the manner by which unresolved individual provider or county welfare board disputes that may arise about application of these regulations excluding regulation B.5. will lye settled. Unresolved disputes are defined as those disagreements that cannot be resolved informally between the proprietor -and Cie department staff normally assigned responsibility for administration, or the provider and a county welfare board.
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> b. Appeals examiner. Unresolved disputes will be heard by a staff person from the state of Minnesota's Hearings Examiner office.
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> C. time limit. The provider, or tne county, has 30 days to appeal from the date of the department's notification of the new per diem rate.
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> d. Appeal procedure. If the provider and the department staff normally assigned responsibility for administration or the provider and the county welfare board cannot agree to a settlement of the dispute, then each party will submit in writing, the facts, arguments and any other appropriate data to the hearings examiner. The examiner will review the dispute, request additional information or analyses to be submitted by the department or the provider, and then recommend to tne commissioner disposition of the dispute. Because existing state law does not permit the commissioner to delegate his powers, final authority on disposition of disputes must be retained by the commissioner.

,be Facility argues that since the County has not submitted to the Hearing
Examiner the written facts, arguments and other data required any Part B.5.d.
that its appeal must be dismissed. It argues that appeals must be perfected

in a manner which gives proper notice to all parties concerned, and where an appeal fails to particularize grounds on which it is based, ',-he courts have uniformally held the appeal to be fatally defective and have dismissed it. In support of that proposition it cites in re State ex rel. Employment Security Commission et al., 239 N.C. 65l, 68 S.E.2d 311 (1951) Zier v. Bureau of Un-employment Compensation, 151 Chic St. 123, 84 N.E.2d 746 (1949) and Davidson v. Review Bd. of Indiana Emp. Sec. Div., 87 N.E.2d 586 (Ind. 19(63). Nbne of those cases support dismissal of the County's appeal in this case. on the contrary, in each of the cited cases, appeals to a court from final agency decisions were involved and the statutes under which the appeals were made specifically required that the appellant specify the errors appealed from.

In this case, rule 52B.5.c., governing appeals from rate determinations, does not require that the grounds for tie County's appeal be specified. Under Part B.5.d., there is language which provides that in the event the parties

cannot agree to a settlement each party will submit, in writing, the facts and arguments and other appropriate data to the Hearing Examiner. However, that language does not require dismissal here. That language, assuming it to be applicable at all, specifies the manner in Which the Hearing Examiner would assemble a record and does not specify the manner in Which a proper appeal is made . To the extent that it purports to govern hearing procedures, it is largely superceded by rules of the Office of Administrative Hearings.

The usual rule is that the functions of administrative agencies and courts are different, and rules governing judicial proceedings are not ordinarily applicable to administrative agencies unless made so by statute. See, e.g., Gray Well Drilling Co. v. Wisconsin State Board of Health, 263 Wis. 417, 419, 58 N.W. .2d 64, 65 (1953).. As Professor Davis has noted, the "most important characteristic of pleadings in the administrative process is their unimportance." I Davis Administrative Law Treatise 13.04 (1958). As Davis points out in that section, as long as a party has notice of the issues prior to the actual hearing, and an opportunity to prepare to meet them, deficiencies in pleadings are cured, regardless of any formalized pleading requirements that might be applicable to the courts.

Although the Facility may not clearly understand the nature of the County's objections to the rate determination issued by the Department, the Hearing Examiner has already ordered the County to file a prehearing statement specifiying the cost items objected to and tne factual and legal basis for its objections. This will give the facility notice of tne grounds for the County's objections and the facts or law it relies upon.

In sum, the Facility's motion to Dismiss must be denied because there is no statute or rule which requires the County to particularize the grounds for its appeal at the time its appeal is filed.

J.L.L.